

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

UNIVERSAL RECOVERY SYSTEMS, INC.

*Plaintiff,*

v.

SOUNDBITE COMMUNICATIONS, INC.

*Defendant.*

**COMPLAINT**

Ref. # 6,285,752  
6,621,900  
6,980,640

COMES NOW PLAINTIFF, and for its complaint against Defendant, states and alleges as follows:

**THE PARTIES**

1. Plaintiff Universal Recovery Systems, Inc. ("URS") is incorporated under the laws of Minnesota, having a principal place of business at 7575 Corporate Way, Eden Prairie, Minnesota 55344.

2. Upon information and belief, SoundBite Communications, Inc. ("SoundBite") is incorporated under the laws of Delaware and has its principal place of business at 22 Crosby Drive, Bedford, Massachusetts 01730.

**JURISDICTION AND VENUE**

3. This action arises under The Acts of Congress relating to patents, 35 U.S.C. § 1, et. seq., as hereinafter more fully appears.

4. This Court has subject matter jurisdiction over Plaintiff's patent infringement lawsuit under 28 U.S.C. §§ 1331 and 1338(a).

G. This case be adjudged and decreed exceptional pursuant to 35 U.S.C. § 285 and that Plaintiff be awarded their costs and attorney's fees in pursuing this action; and

H. Plaintiff be awarded such other and further relief as this Court may deem necessary and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

UNIVERSAL RECOVERY SYSTEMS, INC.,  
By their attorneys,

Dated: May 1, 2008

s/Keith M. Sorge

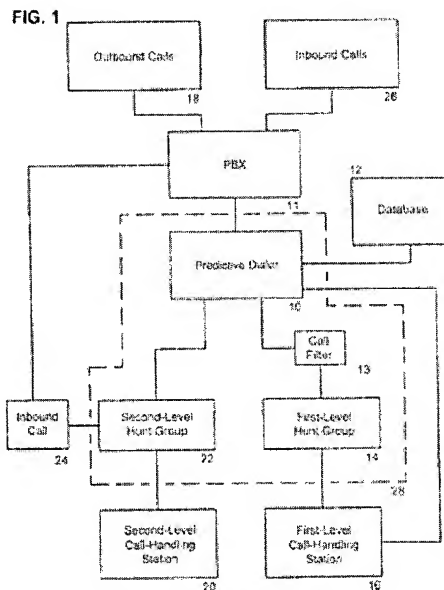
Daniel W. McDonald  
Keith M. Sorge  
Merchant & Gould  
3200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(612) 332-5300

jurisdiction over URS' claims under 28 U.S.C. § 1332 (diversity of citizenship). The amount-in-controversy exceeds \$75,000.

6. This court has personal jurisdiction over the Defendant by virtue of, *inter alia*, its continuous and systematic contacts with Minnesota.

### **BACKGROUND**

7. In December 1997, inventor Blake Rice filed a patent application for his novel system and method for routing telephone calls. His inventions address, in one embodiment, routing telephone calls between first and second groups of call-handling stations as shown below.



**Fig. 1 of the Rice Patents**

5. This Court has subject matter jurisdiction over Plaintiff's fraudulent misrepresentation claim under 28 U.S.C. § 1367. This Court also has subject matter

8. On September 4, 2001, United States Letter Patent No. 6,285,752 (the '752 patent") was duly and legally issued to Rice for his invention of a call routing system and method. On September 16, 2003, United States Letter Patent No. 6,621,900 ("the '900 patent")(Exhibit A) was also duly and legally issued to Blake Rice for his invention. On December 27, 2005, United States Letter Patent No. 6,980,640 ("the '640 patent") was duly and legally issued to Blake Rice for his invention. The '752, '900, and '640 patents are commonly referred to as the "Rice Patents."

9. Blake Rice assigned his rights in the Rice Patents to Plaintiff Universal Recovery Systems, Inc. URS uses the patented method in the services it licenses and sells.

10. Plaintiff became aware that SoundBite Communications, Inc. sold an automated voice messaging ("AVM") system. SoundBite's literature described a two-level system for dialing calls, the first level verifying that a "right-party" is on the telephone, the second level transferring the call to a second group that communicates with the right-party.

11. The information available about the use of SoundBite's AVM system showed that the system appeared to meet all the elements of several claims of the Rice Patents. The system placed calls, verified right-party contacts at a first level, and routed the calls to a call center at a second level once the right party contact was verified. It provided information about the caller when the call was transferred.

12. SoundBite's in its September 26, 2007 and October 15, 2007 prospectuses featured a diagram showing a person talking on the phone at the verification level.

13. Plaintiff strongly believed that SoundBite infringed the Rice Patents and authorized its corporate counsel, David Fenske, to send a letter to SoundBite regarding enforcement of the Rice Patents informing SoundBite it may infringe and offering license.

14. Mr. Fenske sent two letters on October 16, 2007 to law firms identified in SoundBite prospectus.

15. The letters sent by Mr. Fenske arrived October 17, 2007. SoundBite contacted URS the next day, and asserted its AVM system did not infringe the Rice Patents.

16. On October 19, 2007, SoundBite filed a declaratory judgment suit in the United States District Court for the District of Massachusetts praying for a declaration of noninfringement of the Rice Patents as well as a claim for "tortious interference with advantageous relations" against both Blake Rice and URS. (Civil Action No. 07-cv-12003-WGY).

17. On October 20, 2007, counsel for SoundBite sent an email threatening, "if this IPO does not go forward, there will be a multi-million liability for your clients."

18. SoundBite requested that URS provide a statement by 5:00 p.m. on October 22 indicating URS legal and factual basis for its infringement of the Rice Patents, purportedly to avoid holding URS liable for any failure of the SoundBite IPO to go forward if such a statement was not provided. SoundBite represented it would warrant non-infringement of the Rice Patents if URS withdrew its claims.

19. On October 22, 2007, counsel for SoundBite sent an email informing URS that if they did not respond by noon October 23, 2007, that URS will be preventing the

IPO from proceeding. Included in the email was the statement, "I assure you that the consequences are going to fall on your side of this if the IPO does not go forward."

20. In reliance upon this representation that URS had to respond immediately and that SoundBite did not infringe, URS filed a Statement of Non-Liability regarding the issued patent on October 23, 2007, directed to past and then-present products of SoundBite.

21. SoundBite amended its complaint to withdraw its declaratory judgment claims for non-infringement but continued to prosecute its tortious interference claim.

22. SoundBite never provided URS a warranty of non-infringement.

23. In SoundBite's tortious interference action, SoundBite filed the affidavit of Timothy R. Segall, on February 29, 2008 in support of SoundBite's opposition to URS' motion for summary judgment.

24. Segall's affidavit explained how the SoundBite AVM system operated.

25. Contrary to SoundBite's previous representations to URS that the SoundBite system did not infringe the Rice Patents, Segall's affidavit made clear that SoundBite's AVM system meets all the elements of at least the '900 Patent (claim 1). The system places calls using customer information, verifies right-party contacts at a first level using voice synthesizers through a call routing signal, and routes the calls to live operators at call centers at a second level once the right party contact is verified. It provides information about the caller when the call is transferred at the second level. The SoundBite system also searches or hunts for an available voice synthesizer to provide a message to verify the right party is on the phone, searches for an available operator at the



call center, and searches for available ports to make and route the calls at the first and second levels.

26. Despite SoundBite's representation that it was willing to warranty non-infringement, the Segall Affidavit identified above provides proof that SoundBite offering for sale, selling, using and inducing others to use a system that infringes at least the '900 Patent.

27. URS filed its October 23, 2007 Statement of Non-Liability regarding the Rice Patents, including the '900 patent, based upon SoundBite's representation that SoundBite's system did not infringe. SoundBite's statement was false.

### **COUNT I**

#### **FRAUDULENT MISREPRESENTATION**

The above allegations are incorporated by reference.

28. SoundBite made a false representation that it was willing to warrant non-infringement of the Rice Patents. SoundBite made the representation knowing of its falsity or asserted as fact without knowledge or whether it was true or false.

29. SoundBite made the representation with the intention of inducing URS to act in reliance thereon. SoundBite gave unreasonable deadlines for URS to act. But for SoundBite's representation that it would be willing to warrant non-infringement and that SoundBite had to have the statement immediately, URS would not have filed the October 23, 2007 Statement of Non-liability.

30. SoundBite's representation did cause URS to act in reasonable reliance thereon.

31. URS suffered pecuniary damage as a result of the reliance.

**COUNT II**

**INFRINGEMENT OF U.S. PATENT NO. 6,621,900**

The above allegations are incorporated by reference.

32. SoundBite has infringed and still is infringing the '900 patent by making, offering for sale, using and inducing others to use the SoundBite AVM system in this district and elsewhere and will continue to do so unless enjoined by this Court.

33. SoundBite had actual knowledge of the '900 patent and, on information and belief, had actual knowledge that the making and using of the SoundBite system as modified since October 23, 3007 infringes the '900 patent, contributes to the infringement of that patent, and induces the infringement of that patent by others.

34. SoundBite's infringement of the '900 patent is now and has been willful.

35. SoundBite's actions have cause harm to URS including lost sales. URS' business has been and continues to be harmed by SoundBite's actions.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment that:

A. Plaintiff's October 23, 2007 statement of liability is deemed null and void or rescinded due to its procurement by the fraudulent misrepresentation of Defendant.

B. The Defendant has infringed, contributory infringed and/or induced infringement of one or more claims of United States Patent No. 6,621,900;

C. The Defendant's infringement of one or more claims of United States Patent No. 6,621,900 was willful;

D. The Defendant, its officers, agents, servants and employees, and those persons in active concert or participation with any of them be enjoined from further infringing, contributing to the infringement, or inducing the infringement of United States Patent Nos. 6,621,900, and be permanently enjoined from continued use, offer for sale, or sale of the Defendant's products or services used to infringe the patents in suit;

E. Plaintiff be awarded damages arising out of Defendant's fraudulent misrepresentation.

F. Plaintiff be awarded damages arising out of Defendant's infringement of United States Patent Nos. 6,621,900, including treble damages for willful infringement by Defendant as provided by 35 U.S.C. § 284, with interest;